STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-851

August 22, 2000

MAINE PUBLIC UTILITIES COMMISSION
Investigation Into Bell Atlantic – Maine's Alternate Form of Regulation

ORDER ON RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

On July 10, 2000, the Public Advocate filed a Motion for Reconsideration requesting the Commission to reconsider its decision in the Order Denying OPA Request for Revenue Requirement Case, issued in this case on June 20, 2000. At our deliberations on August 3, 2000 we granted the Public Advocate's Motion for Reconsideration, but we decided that we will not change our decision.

The Public Advocate raises few, if any, new arguments in its Motion or in its supporting memorandum. We will address two separate questions. The first is whether the AFOR statute, in particular 35-A M.R.S.A. § 9103(1), requires the Commission to reset the Company's rates pursuant to a new revenue requirement finding each time it extends an existing alternative form of regulation (AFOR) or establishes a new AFOR. Assuming that we are not required by law to conduct a revenue requirement proceeding and to reset rates based on the findings of that proceeding, the second question is whether we should conduct a revenue requirements proceeding as a matter of discretion. The answer to both of these questions is no.

We conclude again that section 9103(1) does not require the Commission to establish a new revenue requirement or a resetting of rates each time an AFOR is extended or renewed. The AFOR statute gives the Commission discretion to adopt an AFOR. If the Commission does adopt an AFOR, section 9103(1) states that the Commission must take some action to ensure that ratepayers are not paying more for basic local exchange service than they would have paid in the absence of an AFOR, but section 9103(1) does not specify the action that the Commission must take. Nothing in that subsection expressly requires a resetting of rates; such a requirement also cannot be necessarily implied. Nothing in the subsection precludes the Commission from ensuring the condition by means other than a revenue requirement proceeding, e.g., through the form of regulation itself or, as proposed in the Further Notice of Investigation in this case (June 26, 2000), through rate design.

Section 9103(1) also states that an AFOR may "not be less than 5 years nor exceed 10 years without the affirmative reauthorization by the commission…," thereby granting substantial flexibility with regard to the duration of an AFOR. Under that provision, the Commission could allow an AFOR to run for 10 years, or perhaps even longer, without a resetting of rates to match a currently-determined revenue requirement. During the entire 10-year (or longer) period, a telephone utility could be

allowed to "over-earn" (as defined by the Public Advocate), suggesting that the Legislature is less concerned with a utility's earning level (or traditional "over-earning") than with the prices that Maine consumers must pay. In fact, the possibility that a utility may earn more than a rate of return that may be incorporated in a "starting point" for an AFOR serves as the primary incentive under alternative regulation for a utility to be efficient and reduce costs. Absent this incentive, it is possible that under traditional regulation a utility might earn a lower return but have higher prices than under incentive regulation. Although seemingly paradoxical, a higher return under incentive regulation could be accompanied by lower prices. Significantly, the Legislature did not require the Commission to ensure that a telephone utility not earn a greater return under an AFOR. Instead, the law requires the Commission to ensure that prices for basic local service be no higher under an AFOR.

The Public Advocate also apparently believes that, if the Commission extends the duration of an original AFOR or commences a new AFOR, the statute requires the Commission to begin anew in the same manner that it did for the initial period, i.e., by conducting a new revenue requirement proceeding and resetting rates based on the cost of service findings that the Commission makes in that proceeding. It seems more likely that in authorizing the Commission to establish an AFOR, the Legislature was using the term "alternative form of regulation" in a more general sense. There is no indication that the Legislature intended a series of separate, discrete plans, or that the Commission must set a revenue requirement, and new rates based on that revenue requirement, each time the Commission extends or establishes a new AFOR period.

We now address the question of whether as a matter of policy we should conduct a revenue requirement proceeding. As we explained in the June 20 Order, conducting a revenue requirement proceeding tends to undercut the efficiency incentive. Indeed, knowledge that a revenue requirement proceeding will occur could create a conflicting incentive to allow costs to rise toward the end of an AFOR period so that the test year used to establish the revenue requirement and rates will include those costs. Certainly, there is some question whether any efficiency gains (beyond those mandated by the form of regulation that is in effect) will be passed on to ratepayers in the form of lower prices. Under the AFOR that is now in effect, a benchmark level of efficiency (but not the actual level) is passed on through the operation of the price regulatory index (PRI). We do not agree with the proposition that ratepayers are entitled to all efficiency gains; such an approach surely diminishes or eliminates the efficiency incentive.[1] Nevertheless, as a general proposition, cost reductions should result in lower prices; such is the normal expectation in competitive markets. For that reason, we believe that the scarce resources of the Commission and the parties are better spent on the various ongoing proceedings that are designed to ensure that Verizon-Maine's prices for local service are subject to competition, which is ultimately the best guarantee of low prices. We hope for the Public Advocate's full participation in those proceedings.

[1]Of course, the utility does get to keep the financial benefits of any historic efficiency gains, whether under "traditional" rate-of-return regulation or under an AFOR.

We do not decide that there will be no circumstances under which it would be appropriate to conduct a revenue requirements proceeding, either in conjunction with the extension of an AFOR or at some other time. One such circumstance might include insufficient movement toward competition for local service, particularly if there were an indication that cost reductions attributable to efficiency were not being passed on through lower rates. We share the Public Advocate's concern that competition for local service may not occur as quickly as we hope; if that proves to be the case, it may warrant reconsideration of the appropriateness of a revenue requirement proceeding. In the AFOR proceeding, we invite parties to suggest ways in which to establish benchmarks for competition. We do not, however, see a need for a revenue requirement proceeding at this time.

For the foregoing reasons, we deny the Motion for Reconsideration by the Public Advocate of our Order Denying OPA Request Revenue Requirement Case.

Dated at Augusta, Maine, this 22nd day of August, 2000.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.